

DUANE W. DOHSE

IBLA 82-877

Decided November 16, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application U-50585.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorney-in-Fact or Agents -- Oil and Gas Leases:
Applications: Filing

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

APPEARANCES: Duane W. Dohse, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Duane W. Dohse has appealed from the decision of the Utah State Office, Bureau of Land Management (BLM), dated May 4, 1982, rejecting his noncompetitive oil and gas lease application, U-50585, because it was not fully executed. Appellant's application had been drawn with first priority for parcel UT 17 in the simultaneous oil and gas lease drawing held in January 1982.

The basis for the BLM decision was appellant's failure to answer the questions on the back of the application by completing items (d), (e), and (f), relating, respectively, to other parties in interest, assignments, and multiple filings. 1/

1/ Items (d) through (f) are a series of questions, each of which is followed by boxes to be checked "Yes" or "No" in response. The questions are:

"(d) Does any party, other than the applicant and those identified herein as other parties in interest, own or hold any interest in this application, or the offer or lease which may result?

In his statement of reasons, appellant argues that

1. The boxes to check serve no purpose and therefore only add to ones confusion. (d) and (e) are both answered in the space provided above the list a, b, c, . . . in that if there is a name there the answer to (d) and (e) is YES; if no name the answer is NO. Therefore an unnecessary redundancy.

2. (f) is totally unnecessary because the rules for the lease program stipulate you can't file two applications for the same parcel or you're automatically disqualified. Again, unnecessary redundant confusing.

3. Most confusing and the main reason for my appeal is the inappropriate position of the parenthetical instruction (check appropriate boxes). This does not apply to (a), (b), and (c) and therefore should not have been placed for instruction at that point, but rather before (d). No clear instruction is given for (a), (b), and (c).

[1] The applicable regulation, 43 CFR 3112.2-1(a), provides in relevant part: "An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart." (Emphasis added.) The application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes).\" (Original in italics.) Small boxes appear following those items where a checked response is required.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7 (1981); 2/ the assignment of an interest in the lease offer (question (e)) prior to lease issuance or the lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3; and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

fn. 1 (continued)

"(e) Does any agreement, understanding, or arrangement exist which requires the undersigned to assign, or by which the undersigned has assigned or agreed to assign, any interest in this application, or the offer or lease which may result, to anyone other than those identified herein as other parties in interest?

"(f) Does the undersigned have any interest in any other application filed for the same parcel as this application?"

2/ 43 CFR 3102.2-7 (1981) was repealed effective Feb. 26, 1982. 47 FR 8544 (Feb. 26, 1982). Since appellant's application was drawn at the January 1982 drawing, however, the regulation is applicable.

Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first qualified applicant. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. Jake Huebert, 59 IBLA 179 (1981).

The information required under questions (d), (e), and (f) on Form 3112-1 (July 1980) was part of the certification of qualifications required of all applicants for oil and gas leases. William J. McGrath, 62 IBLA 110 (1982). Strict compliance with the regulations governing each drawing, 43 CFR Subpart 3112, is required to protect the rights of the second and third qualified applicants. Bonita L. Ferguson, 61 IBLA 178 (1982); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, 544 F.2d 1067 (10th Cir. 1976).

This Board has repeatedly held that an applicant has not complied with 43 CFR 3112.2-1(a) where he has failed to answer questions (d), (e), and (f) on the application and that such failure properly results in rejection of the application. Carol V. Miller, 66 IBLA 394 (1982); John Gahr, 65 IBLA 268 (1982); Clifford E. Shaw, 63 IBLA 293 (1982); and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin

Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

